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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-102

FRED E. RINGE, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF CLAIMS

PETITIONER'S REPLY TO THE MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner seeks a Writ of Certiorari to the United States Court of Claims to review its Order issued April 23, 1976, which is set forth as Appendix A to the Petition. Quite correctly, the Honorable Robert H. Bork, Solicitor General, in a Memorandum for the United States in Opposition, has informed the Supreme Court that to be on time the petition should have been filed July 22, 1976.

As petitioner's counsel, on the day I reviewed the Court of Claims Order I calculated when the Petition for

Certiorari would be due. Aware of the importance of that date, I figured it several times. The date I arrived at consistently was July 23, 1976. Satisfied, I proceeded accordingly.

The printer had the petition draft weeks before filing time. It was completed in time to file late the afternoon of July 22, 1976. Rather than rush, the petition was filed on the 23rd. I then believed it was timely filed.

Some cases on untimely filing involve meritorious circumstances. But petition after petition has been denied because each one was filed untimely. I have no meritorious circumstances to plead. Simply put, it was a human error which defies explanation.

Though not on the subject of timeliness, *Ex Parte Republic of Peru, The Ucayali* (1943), 63 S.Ct. 793, 318 U.S. 578, is pertinent. There the Court decided it had the power to issue common law writs. In footnote 4 the Court alluded to testimony before Congress on the purposes and meaning of the Judicature Act of 1925 presented by Chief Justice Taft and three Associate Justices. In that note the Court stated:

> ". . . the great purpose of the Act was to curtail the Court's *obligatory* jurisdiction by substituting, for appeal as of right, discretionary review by Certiorari in many classes of cases". (emphasis added).

In the same footnote the Court subsequently asserted:

> "The jurisdiction of this Court to issue writs, like its jurisdiction to grant Certiorari, is discretionary. The definite aim of the 1925 Act was to enlarge, not destroy the Court's discretionary jurisdiction". 63 S.Ct. at Pg. 798.

In resolving the case proper the Court, referring to its ". . . ultimate discretionary jurisdiction by certiorari", stated ". . . that power must be exercised only where a question of public importance is involved." 63 S.Ct. Pg. 798. Because the "dignity and rights of a friendly sovereign state" were involved, the Court decided: "If the Republic of Peru has not waived its immunity, we think there are persuasive grounds for exercising our jurisdiction to issue the writ in this case. . .". 63 S.Ct. Pg. 799.

If that case had involved an out of time filing of a Petition for Writ of Certiorari, instead of a common law writ, confronted by a matter of such public importance, would the Court have granted the Writ of Certiorari? The jurisdiction of this Court . . . to grant Certiorari, is discretionary", *supra.*

In his main brief before the Court of Claims (also alluded to on pages 3b and 4b of Appendix B to the Petition) Petitioner cited an interim opinion issued by the late Judge Alexander Holtzoff in *Lodge 1858, American Federation of Government Employees, et al. v. Administrator, NASA, et al.,* Civil A. No. 3261-67 (Nov. 30, 1973) United States District Court for the District of Columbia, the substance of which is material to petitioner's case. Last month (August 12, 1976) Judge Joseph C. Waddy, after an eight-year litigation, issued the District Court's final order in the afore-cited case, nullifying 32 NASA personal service contracts. Decisively, in a 64-page opinion Judge Waddy scored one of the NASA field activities for contracting in wilfull violation of the same procurement laws and regulations as those opposed by Petitioner. Judge Waddy's decision was hailed as a "– bona fide landmark in the world of civil service law". (Washington Evening Star, August 18, 1976).

Petitioner is not a giant labor union. He commands no such resources to analyze and organize his case so

well. Yet as long ago as 1968 he was a conscientious contracting officer for a NASA field office. Acting on principle, legal knowledge and experience, he refused to join his procurement management in the practices which petitioner has alleged, and Judge Waddy now has found to be illegal. Petitioner's refusal to acquiesce in the illegal contact practices ultimately cost him his job.

If a federal agency's compliance with civil service law – or any law – is of public interest, then too, so is petitioner's cause. He seeks justice for himself. But beyond that petitioner has carried his cause through the levels of administrative and judicial strata, and finally to this Court, compelled by the same sense of duty to comply with law which prompted him in the first place to resist violation of procurement laws and regulations.

Unexpectedly now, his way is blocked by my procedural error. The fault is exclusively mine, not petitioner's. Yet if the barrier cannot be removed, then his whole cause will be demolished without concern for the substance of his action.

It is recognized that this is a matter of statutory compliance, rather than rules. A commentary on rules revisions by Mr. Justice Black has corollary significance:

> "The principal function of procedural rules should be to serve as useful guides to help, not hinder, persons who have a legal right to bring their problems before the courts * * * Judicial statistics would show, I fear, an unfortunately large number of meritorious cases lost due to inadvertent failure of lawyers to conform to procedural prescriptions having little if any relevance to substantial justice." *Order Adopting Revised Rules of the Supreme Court of the United States,* 346 U.S. 945, 946.

Petitioner urges that the Court has the discretion, hence the power to preserve his cause if the Court should decide petitioner's cause is of sufficient public importance.

The Court is requested to not deny petitioner's request for Certiorari without first reviewing the substance of his petition. If the Court finds his cause to be of importance to the public, then my error notwithstanding, the Court is requested to give priority first to the public interest aspect of the case over a mechanical, non-substantial error.

Respectfully submitted,

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